South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

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PROTECTING CONSUMERS SINCE 1975

June 1, 2022

VIA ELECTRONIC FILING
The Honorable Jocelyn Boyd
Chief Clerk/Executive Director
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Docket No. 2021-361-G
Application of Dominion Energy South Carolina, Incorporated for the Approval of New Natural Gas Energy Efficiency Programs and Notice of Intent to Seek Net Lost Revenue under the Natural Gas Rate Stabilization Act.

Dear Ms. Boyd:

Please find enclosed for filing the Post-Hearing Brief on behalf of the South Carolina Department of Consumer Affairs. As indicated on the Certificate of Service, all parties of record will be served via electronic mail.

Regards,

Roger Hall, Esq.
Deputy Consumer Advocate

Enclosures
Cc: Parties of Record (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA
DOCKET NO. 2021-361-G

IN RE: Application of Dominion Energy South Carolina, Incorporated for the Approval of New Natural Gas Energy Efficiency Programs and Notice of Intent to Seek Net Lost Revenue under the Natural Gas Rate Stabilization Act (Application Does Not Include a Request for a Rate Increase)	**POST-HEARING BRIEF OF THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS**

Pursuant to S.C. Code Ann. Regs § 103-851 and the schedule established by the Public Service Commission of South Carolina ("Commission" or "PSC") in this proceeding, the Department of Consumer Affairs ("DCA" or "Department") submits this brief in lieu of a proposed order. The brief focuses on the issues raised by the Department, primarily the shared savings incentive ("SSI") proposed by Dominion Energy South Carolina, Incorporated ("DESC" or "Company").

For the reasons discussed herein, the Commission should reject the Company's proposed SSI mechanism. In the alternative, to the extent the Commission determines an SSI is required, the Commission should modify the proposed SSI mechanism to:

(1) use the Commission-authorized rate of return ("ROR") instead of return on equity ("ROE"); and

(2) incentivize future Demand Side Management ("DSM") performance through the mechanism.

The Department recommends allowing for full recovery of the SSI only if the Company attains 100 percent or more of its estimated future energy savings. This encourages both investment and conservation, but emphasizes conservation in accordance with S.C. Code Ann. § 58-37-20.

Additionally, while DCA takes no position on the merits of any of the Company's proposed Natural Gas DSM programs, DCA also recommends that the Commission scrutinize the cost-effectiveness of each program to ensure that non-participating customers are not unfairly subsidizing the costs of the program without receiving a commensurate benefit.

I. STATEMENT OF THE CASE

A. DESC'S APPLICATION

On November 23, 2021, DESC filed its application pursuant to S.C. Code Ann. § 58-37-20 and § 58-5-400 *et seq.*, and S.C. Code Ann. Regs. § 103-819 and 103-823. The Company requested (1) authority to create four new demand reduction and energy efficiency programs ("Demand Side Management" or "DSM") for the Company's residential and commercial natural gas customers; (2) authority to modify, expand, amend, or add any measure or program proposed in this Docket without the requirement to seek prior Commission approval to do so; (3) authority to create a new Rider to Retail Gas Rates—Demand Side Management Component ("Gas DSM Rider") for the recovery of the program costs arising from the new natural gas DSM program, including an SSI of 9.9 percent; and (4) recovery of net lost revenues resulting from the proposed DSM programs through its annual Natural Gas Rate Stabilization Act ("RSA") proceedings under S.C. Code Ann. § 58-5-400, *et seq.*

The Gas DSM Rider includes a cost tracker mechanism,[1] allowing the Company to recover expenses associated with the implementation of the Natural Gas DSM programs. If approved, unrecovered balances associated with the implementation of the programs will be amortized over a three-year period and include carrying costs based on the Company's weighted average cost of long-term debt. The Company's proposed SSI would allow it to receive a financial payment equal to 9.9% of customers' Total Resource Cost ("TRC") net benefits based on evaluated savings as determined by the Company's annual third-party Evaluation, Measurement, and Verification ("EM&V") Report.

In its direct testimony, the Office of Regulatory Staff ("ORS") disagreed with the 9.9% proposal and recommended that the SSI rate be aligned with the ROE established in DESC's upcoming general gas rate proceeding in 2023. (Tr. 230.6:5-230.7:3). In rebuttal testimony, the Company agreed to accept ORS's recommendation, so long as the Commission does not equate the SSI with the Company's ROE on a going forward basis. The Company proposed to continue to utilize its original 9.9 percent SSI proposal until it has an opportunity to true up the rate to the 2023 rate case ROE during its 2024 annual DSM update. (Tr. 22.10:13-18).

B. EVIDENTIARY RECORD

In addition to its application, DESC filed the direct testimony and exhibits of: James Herndon, Vice President of Strategy and Planning Practice in the Utility Services Business Unit of Resource Innovations, Inc.; Sheryl Shelton, Manager of Demand Side Management / Energy Conservation for Dominion Energy South Carolina, Inc.; and Jaton Smith, Manager - Regulation

[1] *See,* "Cost Trackers," Electricity Consumers Resource Council ("ELCON"), available online at: "https://elcon.org/cost-trackers/"; "A cost tracker is a rate adjustment mechanism for expedited recovery of specific utility costs without any regulatory review. Balancing accounts are typically used to track unrecovered allowances, and cost recovery is often implemented using tariff sheet provisions called riders. Trackers are typically applied to a single issue such as environmental controls. Most trackers are a direct pass-through of costs to the utility's ratepayers. A tracker may or may not include capital costs."

for Dominion Energy Services, Inc. The Company also filed the rebuttal testimony of James Herndon, Shery Shelton and Jaton Smith.

The Department filed the direct testimony and exhibits of David Dismukes, PhD., Consulting Economist with the Acadian Consulting Group. The Department also filed the surrebuttal testimony of Dr. Dismukes. During the hearing, the Commission, with the consent of the parties, qualified Dr. Dismukes as an expert in utility economics and ratemaking issues, including matters related to energy-efficiency program evaluation, cost-benefit and cost-effectiveness analyses, and incentive designs. (Tr. 211:21-213:8).

The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") filed the direct testimony of Jim Grevatt, Managing Consultant at Energy Futures Group. CCL and SACE also filed the surrebuttal testimony of Mr. Grevatt. With the consent of the parties, Mr. Grevatt was qualified as an expert in energy-efficiency program development and management, including natural gas energy-efficiency programs and programs for low-income households. (Tr. 174:21-175:10).

Pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2020), ORS is a party of record in this proceeding. The ORS filed the direct testimony of O'Neil Morgan, Senior Engineer - Utility Rates and Services Division at ORS. With the consent of the parties, Mr. Morgan was qualified as an expert in energy-efficiency and demand-side-management program development and implementation. (Tr. 224:4-15).

The evidentiary hearing was held on May 2, 2022, in part virtually and in part at the offices of the Commission. The Honorable Justin T. Williams, Chairman of the Commission, presided at the public hearing. DESC was represented by Michael Anzelmo, Esquire, K. Chad Burgess, Esquire, Matthew W. Gissendanner, Esquire and Jason A. Richardson, Esquire. DCA was represented by Roger Hall, Esquire and Connor Parker, Esquire. CCA and SACE were represented by Kate Mixson, Esquire and Emma C. Clancy, Esquire. ORS was represented by Christopher Huber, Esquire, and Nicole Hair, Esquire.

II. STANDARD OF REVIEW

The Commission is a quasi-judicial body vested with the power to set just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed or observed, and followed by every public utility in this State. S.C. Code Ann. §58-3-140(A) (2015). In making its determinations, "the PSC should evaluate the evidence in accordance with objective and consistent standards." Daufuskie Island Util. Co. v. ORS, 427 S.C. 458, 463 (2019). However, as the state Supreme Court has established, an existing practice is no substitute for an evaluation of the evidence. Heater of Seabrook v. PSC, 332 S.C. 20, 26 (1998) citing Hamm v. PSC, 309 S.C. 282, 289 (1992). In other words, "a previously adopted policy may not furnish the sole basis for the Commission's action" Id.

The Commission is permitted to modify its existing policies or practices, as it is "not bound by its prior decisions, and may re-examine and alter its previous findings as to reasonableness when conditions warrant." Duke Energy Carolinas, LLC v. ORS, 434 S.C. 392, 405-406 (2021) citing S. Bell Tel. & Tel. Co. v. PSC, 270 S.C. 590, 610 (1978) (Ness, J., concurring in part and dissenting in part); see also 73A C.J.S. Public Administrative Law and Procedure § 352 (June 2021 Update) (explaining that *stare decisis* does not ordinarily bind administrative bodies to their prior decisions—or the principles and policies underlying those decisions—and that while prior decisions are entitled to great weight, so long as the administrative body rationally justifies its change of position, it may depart from prior rule or practice).

In the fulfillment of its duties, the Commission must interpret statutes that apply in matters before it.

> The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.

Hitachi Data Systems Corp. v. Leatherman, 309 S.C. 174, 178 (1992).

A statute must be read as a whole and given a "practical, reasonable and fair interpretation consonant with the purpose, design and policy of lawmakers." Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 368 (1942). The Commission "cannot rewrite the statute and inject matters into it that are not in the legislature's language." Georgia-Carolina Bail Bonds, Inc. v. County of Aiken and Goddard, 354 S.C. 18, 25 (Ct. App. 2003).

III. FACTUAL AND LEGAL ARGUMENT

The primary dispute in the current proceeding related to the SSI is whether S.C. Code Ann. § 58-37-20 requires the Commission to establish a mechanism for utilities to receive financial incentives if it chooses to adopt the Company's proposed energy efficiency procedures. DCA's position is that it does not. The Company's testimony that "incentives" means "payments" that are "mandated" is the result of an incorrect reading of S.C. Code Ann. § 58-37-20. (Tr. 21:9-12 and 22.8:18-20). The statute does not reference "financial incentives," and conflating the statute's references to "incentives" with "financial incentives" would render elements of the statute duplicative.[2]

[2] *See*, Hitachi, *supra.*

As established in the direct and surrebuttal testimonies of DCA witness Dr. Dismukes, if approved by the Commission, DESC's proposed regulatory structure for implementing the programs already provides financial incentives, eliminates any negative financial impacts, and will provide non-financial incentives to DESC. The Company admits these other incentives will provide the Company greater benefits and value than the estimated $5,375 from the SSI. (Tr. 81:25-82:9).

If the Commission decides an additional financial incentive in the form of an SSI is required in this case, the ROR should be used to set the amount of the incentive, and further, the SSI should be performance-based. Dr. Dismukes' testimony demonstrates that using the Company's ROE for setting the SSI is inappropriate. (Tr. 219.8:14-219.9:2). The positions of DESC and ORS relative to the SSI and ROE are based on the Commission's previous decisions in the Company's electric DSM programs.[3] (Tr. 74:12-17 and Tr. 241:1-15). As discussed further herein, there are distinct differences in the proposed gas DSM programs that do not warrant the same treatment previously granted.

A. S.C. CODE ANN. § 58-37-20 DOES NOT REQUIRE THE COMMISSION TO APPROVE FINANCIAL INCENTIVES FOR DESC.

S.C. Code Ann. § 58-37-20 allows, but does not require, the Commission to adopt procedures that encourage utilities to invest in cost-effective energy efficient technologies and energy conservation programs.[4] If the Commission decides to adopt such procedures, it must address the following three provisions, listed as separate clauses in the second sentence of S.C. Code Ann. § 58-37-20:

[3] The approval of the SSI for DESC's electric DSM programs also appears to be the result of a settlement agreement. See Order 2010-472, page 13.

[4] "The South Carolina Public Service Commission may adopt procedures…" S.C. Code Ann. § 58-37-20 (emphasis added).

1) Provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or demand;
2) Allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; and
3) Require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented.

Uncontested by parties to this proceeding, S.C. Code Ann. § 58-37-20 requires the Commission, should it choose to adopt energy efficiency procedures, to remove financial disincentives associated with the implementation of DSM programs in order to satisfy these three conditions. If DSM programs were approved without these "guardrails" from the Commission, the utility would be inadequately incentivized to invest in qualified DSM programs in lieu of selling power and earning revenue from sales. The three clauses noted above are incentives themselves that remove the earnings-driven barriers, or disincentives, to the Company to engage in DSM activities. This is how S.C. Code § 58-37-20 "encourages" energy efficiency and conservation as its title states.

DESC incorrectly argues that the first provision of S.C. Code Ann. § 58-37-20 requires that the Commission provide "financial incentives" to utilities that promote DSM programs.

Indeed, the Company goes so far as to argue that the SSI is a "statutorily-mandated payment." (Tr. 21:9-12 and 22.8:18). However, a plain reading of the statute reveals no such mandate. South Carolina Code § 58-37-20 does not mandate an SSI or any other financial bonus payment. The term "financial incentives" does not appear in this clause, nor anywhere else in S.C. Code Ann. § 58-37-20. Calling the payment a shared savings "incentive" does not transmute the meaning of the word "incentive" in the statute into "financial payment." *See,* Georgia-Carolina Bail Bonds, *supra.*

By framing the provisions as "provide incentives and cost recovery" the legislature appears to separate the concepts of "incentives" from "cost recovery" and other financial considerations. If the legislature had intended to mandate an additional financial payment as an incentive for implementing DSM programs, it could have just as easily constructed this provision to read "provide cost recovery, including financial payments and incentives." Indeed, the next provision in the statute states energy suppliers can "recover costs and obtain a reasonable rate of return on their investment", thereby explicitly linking a financial return with the cost recovery.[5] *See,* Hitachi and Greenville Baseball, *supra.*

B. THE PROPOSED DSM RIDER PROVIDES SUFFICIENT INCENTIVES FOR THE INVESTMENT IN DSM PROGRAMS EVEN WITHOUT THE PROPOSED SSI.

An "incentive" is something that motivates or encourages DSM. While a bonus payment may be a motivator, it is not mandated and furthermore not required here for the Company to engage in DSM. The Company argues that it requires the SSI to address two concerns: (1) the potentially negative financial risks from implementing DSM programs, and (2) risks associated

[5] According to its testimony, the Company's proposal to use the weighted average cost of debt on unrecovered expenses "is in accordance with" this provision. (Tr. 40.7:17-40.8:3).

with lost revenues. (Tr. 21.9:11-13). The Commission should recognize that the proposed Natural Gas DSM Rider, even without the SSI, addresses these stated concerns and provides incentives to the Company, thus negating the need for an additional payment from consumers.

While the statute mandates cost recovery, it does not mandate the specific mechanism for that recovery. Therefore, by approving DESC's Rider, as opposed to requiring cost recovery in traditional ratemaking proceedings, the Commission will be providing cost recovery <u>and</u> incentives (i.e., increased certainty and faster recovery). As explained in the surrebuttal testimony of Dr. Dismukes, the proposed Natural Gas DSM Rider allows for near contemporaneous cost recovery of expenses associated with the implementation and administration of the proposed DSM programs. (Tr. 219.5:1-10). As proposed, the Company will track its costs and amortize them over a three-year period, and include carrying costs based on the Company's weighted average cost of long-term debt. This contemporaneous recovery of costs via the rider provides an incentive for the promotion of DSM initiatives relative to other utility activities as this dollar-for-dollar recovery of expenses would not occur if the Company was required to recover these expenses through traditional base rates which are less frequently updated.

The elimination of this risk is not insignificant, as the Company proposes an annual budget associated with its Natural Gas DSM programs of nearly $7.2 million over five years, or approximately $1.4 million per year. The benefit of the reduced financial risk associated with near-assured recovery of these expenses far outweighs any potential benefit associated with the proposed SSI that the Company projects to be $5,375 per year. In fact, the Company noted the SSI "isn't the driving force but it is one of the components" of its decision making. (Tr. 91:23-92:3). The Company indicated "the true driver" for the program was to offer options to its gas customers that are currently only available to its electric customers. (Tr. 76:18-25). Without the SSI, it will still be incentivized to accomplish this goal, assuming the programs are cost-effective.

The Commission should additionally recognize that during the hearing, the Company was unable to sufficiently clarify the "potentially negative financial risks" it would experience from implementing the program. Instead, the Company referenced financial costs incurred for programs that are unable to make it out of the design stage, including "time and energy", staff effort to put the program in place, marketing, potential negative customer perception, or contract breaches. (Tr. 89:1-23 and 91:5-92:8). These are costs which the Company will be reimbursed for through the rider if the program is approved. Furthermore, the Commission should not allow an SSI in order to compensate the Company for potential costs associated with designing failed DSM programs which would provide no benefits to ratepayers.

The Company's second argument holds even less water. The Company argues that it requires the SSI to account for risks associated with lost revenues. As explained by Dr. Dismukes and confirmed by the Company, the RSA allows the Company to recover annually the revenues required for it to maintain a level of earnings within 50 basis points (i.e., 0.5 percent) of the Commission authorized return on equity between rate cases. (Tr. 219.5:19-219.6:7 and 77:25-78:25).[6] This would include any changes in the Company's revenues caused by reduced energy sales. The RSA allows for this true-up regardless of the source of such reduction in energy sales, including if the reduction is the result of the implementation of the Company's Natural Gas DSM programs.

Finally, the Commission should recognize the benefits that the implementation of Natural Gas DSM programs has for the Company regardless of the proposed SSI. As explained by Dr.

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[6] *See also,* S.C. Code Ann. § 58-5-420 and 440.

Dismukes, investment in DSM allows the Company to demonstrate its position as a good corporate citizen amongst the community, imparting a degree of goodwill. (Tr. 219.6:15-219.7:6). For example, the Company proposes to expand its existing electric NEEP to accommodate the Company's natural gas customers, providing low-income customers with energy efficiency education, an in-house energy assessment, and direct installation of low-cost efficient measures delivered via direct customer interactions. A program such as this provides DESC the opportunity to present itself to its customers as more than simply a public utility, but a positive force aiding the community it serves. The Company also confirmed that, if successful, the program would help it avoid curtailments by reducing gas demand and thereby helping ensure supply. The Company admits that these benefits, along with other incentives from its proposed DSM program, exceed any proposed financial benefit proposed by the SSI. (Tr. 80:18-82:9).

C. THE COMMISSION CAN TREAT DSM FOR JURISDICTIONAL NATURAL GAS UTILITIES DIFFERENTLY FROM JURISDICTIONAL ELECTRIC UTILITIES

DESC, throughout this proceeding, references the regulatory support it receives for its DSM initiatives currently implemented by its electric jurisdictional unit as support for its proposed Natural Gas DSM Rider. The Commission should recognize that there is no requirement that it approve similar regulatory treatment for the Company's natural gas division as it has for the Company's electric division.[7] Indeed, differences in the regulatory framework applying to the Commission's oversight of jurisdictional natural gas utilities require different treatment when it comes to the proposed Natural Gas DSM Rider.

S.C. Code Ann. § 58-5-400 *et seq.* allows for all South Carolina natural gas distribution utilities, at their discretion, to elect to implement an RSA mechanism. As previously noted, the

[7] *See,* Duke, *supra.*

RSA allows utilities to annually file requests for rate changes to account for any over or under collection of revenues required to bring the utility's ROE in alignment with the Commission's authorized ROE from its previous rate case proceeding. This realignment occurs anytime the Company's earnings result in an achieved ROE that is outside of a symmetric 50 basis point dead band of the Commission's previously authorized ROE.[8] Importantly, this regulatory framework is not available to electric utilities, and significantly reduces the risks to a natural gas utility's earnings between rate cases.

The Commission should recognize that DESC itself acknowledges the reduction in risk afforded by the RSA to its natural gas operations. While the Company includes a lost revenue adjustment within its DSM Rider for its electric operations, the Company has not proposed to include a similar provision for its Natural Gas DSM programs due to the RSA. The Company notes the RSA "inherently" allows the utility to increase rates to address potential attrition to its earnings caused by a reduction in billing determinates, i.e., reduced volumetric sales. (Tr. 40.5:14-17). The RSA provides the Company's natural gas operations this flexibility regardless of the cause of reduced consumption.

D. IF THE COMMISSION AUTHORIZES AN SSI, IT SHOULD BE BASED ON DESC'S ROR AND NOT DESC'S ROE.

S.C. Code Ann. § 58-37-20 requires that the Commission adopt DSM procedures that make DSM investments as financially attractive as utility investment in traditional generation units. Under traditional ratemaking, DESC is allowed the opportunity to earn a Commission-authorized ROR on its capital investments. This ROR is determined after recognizing the different financing rates attached to different sources of capital available to the utility, principally financing through

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[8] *See*, S.C. Code Ann. §§ 58-5-420 and 58-5-440.

debt instruments and issuances of common stock. As argued by Dr. Dismukes, the application of ROR to capital investments demonstrates that the ROR is also the more appropriate rate to utilize for the SSI if the Commission chooses to adopt one. Both DESC and ORS agreed with Dr. Dismukes' testimony that "[t]he allowed earnings for a utility on rate-base investments is based on target ROR and not ROE rates." (Tr.85:17-22 and 239:20-240:1). There is no logical argument supporting tying the SSI to the Company's ROE, as doing so would ignore the totality of financing sources available for use in its operations.[9,10]

E. IF THE COMMISSION AUTHORIZES AN SSI, IT SHOULD BE TIED TO ACHIEVING PERFORMANCE IN THE FORM OF ENERGY SAVINGS

As its title suggests, S.C. Code Ann. § 58-37-20 requires that the Commission adopt DSM procedures for the purposes of promoting "energy efficiency and conservation". It states that if procedures are adopted, they must provide "incentives" for "end-use technologies that are cost-effective…and reduce energy consumption or demand." S.C. Code Ann. § 58-37-20 (emphasis added). Therefore, if the Commission decides to interpret "incentive" to include an additional payment to the utility above and beyond the incentives already discussed above, any additional payment should be tied to achieving actual, measured energy savings. Otherwise, the program would not be consistent with S.C. Code Ann. § 58-37-20. *See,* Greenville Baseball, *supra.* Further, without linking allowed SSI to the achievement of the projected savings, all future performance risk is shifted from the utility onto ratepayers who ultimately finance DSM initiatives.

[9] The only justification provided by ORS for using the ROE as the SSI was its relation to past Commission practices for electric programs. (Tr. 241:5-15). Relying solely on historic practices as the basis for current determinations is improper, particularly when comparing electric and gas DSM programs given the differences in revenue and cost recovery options available under the RSA. *See,* Heater and Duke, *supra.*

[10] There is no evidence in the record regarding how the Company will finance the proposed program (i.e., all equity, all debt, or a combination of both).

The Company argues that the Commission should reject any attempts to structure the proposed SSI to include performance-based criteria because it previously rejected another performance-based SSI in approving the Company's electric DSM Rider mechanism. (Tr. 22.9:14-16). As previously explained, arguing the Commission should merely follow "historical" decisions in electric DSM cases, is insufficient justification for rejecting a performance-based SSI for this new natural gas proposal. *See,* Heater of Seabrook, *supra*.

The Company also argues that a performance-based SSI would "actually penalize[] the Company twice," by providing the Company with a lower initial incentive and then again by reducing the allowed percentage of recovery. (Tr. 22.9:6-9). While the Department does recommend using the ROR instead of the ROE for any potential SSI, the proposal only reduces the allowed incentive in cases where the Company fails to achieve the future energy savings it initially estimated for its DSM programs. Importantly, approval to implement a DSM program is based on these initial estimates. The Company's estimated energy savings provide the basis for the tests used by the Company to demonstrate the cost-effectiveness of the programs. DCA's alternative proposal cannot be described as a penalty, as even in cases where DESC underperforms, it would still be awarded an incentive, albeit lower than requested by the Company.[11]

To guide the Commission, Exhibit DED-1 to Dr. Dismukes' direct testimony shows that many other states incorporate performance incentive mechanisms into energy efficiency regimes. For example, the state of Arizona allows energy efficiency-related incentives for its two major electric investor-owned utilities ("IOUs"), Arizona Public Service ("APS") and Tucson Electric Power ("TEP"). APS's approved mechanism allows it to receive a tiered incentive based on a

[11] "For example, the Company estimates that it will reduce customer use by 341,659 therms in year 3 of the proposed program. If the Company reduces customer use by only 273,327 therms, or 80 percent, through its DSM initiatives, the Company [would] only receive 80 percent of the authorized SSI percentage." Dismukes Direct, Tr. 217.3:14-18.

percentage of program net benefits, while TEP's approved mechanism provides it with 8 percent of program net benefits.[12] However, both approved mechanisms require the utilities to at least reach a threshold of 85 percent of stated energy efficiency savings before receiving any incentive. Likewise, Arkansas allows its utilities to receive an energy efficiency-related incentive equal to 10 percent of program net benefits, but first requires utilities to show the programs have achieved at least 80 percent of energy savings targets.[13] In total, Exhibit DED-1 to Dr. Dismukes' direct testimony shows that 18 states[14] and the District of Columbia tie incentives to achieved energy savings.[15] Indeed, the exhibit shows that the most common performance incentives first require achievement of a minimum threshold of 65 to 100 percent of stated energy savings goals. DCA's alternative proposal is more generous to the Company than these real-world examples as it would provide DESC an incentive even if its energy savings performance falls below 65 percent of its presented estimates.

F. THE COMMISSION SHOULD CAREFULLY CONSIDER THE EVALUATED COST-EFFECTIVENESS OF EACH PROPOSED NATURAL GAS DSM PROGRAM TO ENSURE THAT SUBSIDIZATION IS MINIMIZED.

During the evidentiary hearing, the Company revealed that its proposed Natural Gas DSM program failed the Ratepayer Incident Measure ("RIM") cost-effectiveness test even though it passed the TRC.[16] (Tr. 106:15-107:7). While this is unsurprising given the nature of natural gas

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[12] Dismukes Direct, Exhibit DED-1, Hearing Exhibit 6, at 1.

[13] Id.

[14] Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Michigan, Minnesota, Missouri, New Mexico, Ohio, Oklahoma, Rhode Island, Texas, Vermont, and Wisconsin

[15] Note that 15 of the states listed in the exhibit do not have energy efficiency cost recovery programs.

[16] The direct testimony of DESC Witness Herndon also indicates this failure, though it is not discussed. His direct testimony states "if benefits are equal to or greater than costs, resulting in a ratio of 1.0 or greater, the measure or program passes from that perspective." (Tr. 28.9:17-19). Herndon Direct Exhibit JH-2, Hearing Exhibit 2, notes the Cost-Benefit of the RIM test is 0.4 with a Net Present Value of -$2,810,723.

operations and potential natural gas DSM measures, DCA believes it is still important for the Commission to recognize the implications.

All DESC ratepayers will be assessed the proposed Natural Gas DSM Rider, regardless of whether or not they choose to participate in any of the Company's proposed DSM programs. A failing RIM indicates that for non-participating ratepayers, any benefits from the proposed DSM programs will not be enough to cover the additional expense associated with the proposed Natural Gas DSM Rider. As admitted by the Company, this effectively means that non-participating ratepayers will be subsidizing the costs incurred by participating ratepayers. (Tr. 109:1-13).

RIM failure does not necessarily mean that the proposed programs are not justified, and DCA takes no position either for or against the proposed Natural Gas DSM programs in the current proceeding. However, DCA recommends that the Commission carefully consider the cost-effectiveness of each proposed Natural Gas DSM program. This consideration should furthermore be cognizant of potential social-economic factors that may prevent some ratepayers from participating in proposed programs. A low-income ratepayer, for example, may have difficulty affording a high-efficiency natural gas furnace regardless of provided rebates. Likewise, renters have limited opportunities to participate in the proposed DSM programs for the simple reason that they do not own the property they are living in. These ratepayers will still be assessed the proposed Natural Gas DSM Rider, potentially creating regressive subsidization from lower-income households to higher income households if the DSM programs are incorrectly designed.

IV. CONCLUSIONS

As set forth in this brief, the Commission should reject the Company's inclusion of an SSI mechanism within the proposed Gas DSM Rider. The relevant statute does not require any additional financial payment as an incentive to the Company. Further, if the Company's proposal is otherwise approved, it will have incentives to invest in the program due to:

1) the recovery of costs in the rider;
2) the application of carrying costs at the weighted average cost of debt;
3) a three-year amortization;
4) annual recovery of lost revenues in the RSA proceedings;
5) providing mechanisms for customers to reduce their energy consumption and the goodwill associated with the program; and
6) reducing natural gas demand which may reduce curtailments on other customers.

In the alternative, to the extent the Commission determines that approval of the programs requires it to include a financial incentive mechanism like the SSI, DCA recommends that the Commission modify the Company's proposed SSI to (1) reflect the Company's current and future Commission-authorized ROR, not ROE, and (2) incentivize future DSM performance through the mechanism by allowing for full recovery of future SSI only if the Company attains 100 percent or more of the future energy savings it estimated in the current proceeding.

Finally, while DCA takes no position on the merits of any of the Company's proposed Natural Gas DSM programs, DCA recommends that the Commission carefully consider the evaluated cost-effectiveness of each program to ensure that non-participating customers are not unfairly subsidizing the costs of the program without receiving a commensurate benefit.

(*signatures on following page*)

Respectfully submitted,

S.C. DEPARTMENT OF CONSUMER AFFAIRS

s/ Roger P. Hall______________________________

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Columbia, South Carolina
June 1, 2022

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2021-349-E

IN RE:	)	
	)	
Application of Dominion Energy South Carolina, Incorporated for the Approval of New Natural Gas Energy Efficiency Programs and Notice of Intent to Seek Net Lost Revenue under the Natural Gas Rate Stabilization Act (Application Does Not Include a Request for a Rate Increase)	)	**CERTIFICATE OF SERVICE**

I hereby certify I have caused to be served this day the **Post-Hearing Brief** to the individuals listed below via electronic mail as follows:

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June 1, 2022
Columbia, South Carolina